

**MINUTES
of the
SECOND MEETING
of the
ETHICS SUBCOMMITTEE
of the
NEW MEXICO LEGISLATIVE COUNCIL**

**October 10, 2007
Room 309, State Capitol
Santa Fe**

The second meeting of the Ethics Subcommittee of the New Mexico Legislative Council was called to order by Representative W. Ken Martinez, co-chair, at 9:40 a.m. in Room 309 of the State Capitol in Santa Fe.

Present

Rep. W. Ken Martinez, Co-Chair
Sen. Michael S. Sanchez, Co-Chair
Rep. Daniel R. Foley
Sen. Mary Jane M. Garcia
Sen. Stuart Ingle
Sen. Leonard Lee Rawson
Rep. Thomas C. Taylor

Absent

Rep. Sheryl Williams Stapleton

Senator Dede Feldman also attended the meeting.

Staff

Evan Blackstone, Staff Attorney, Legislative Council Service (LCS)
Jon Boller, Staff Attorney, LCS
Ric Gaudet, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts given by meeting presenters are in the meeting file.

Wednesday, October 10

Governor's Task Force on Ethics Reform: 2007 Report Summary

Representative Martinez welcomed members of the subcommittee and the public to the meeting and thanked former New Mexico Governor Garrey Carruthers and Dean of the University of New Mexico (UNM) School of Law Suellen Scarnecchia for presenting the Governor's Task Force on Ethics Reform's findings to the legislature.

Governor Carruthers began the presentation by reviewing the four basic goals of the task force: to provide a venue to offer ethics guidelines where there have not been any in the past; to provide educational services to public officials and employees; to provide access by citizens to campaign and lobbyist information and allow for filing of complaints; and to provide for a method of enforcing ethics laws and rules. The 2007 task force reviewed its work in 2006 and added a few new recommendations, based on input from the legislature during the previous session.

Dean Scarnecchia said that the task force made several recommendations, most of which are intended for consideration by the legislature either at the next session or a special session in the spring. The recommendations include:

- establish a state ethics commission;
- establish campaign contribution limits and strengthen campaign reporting requirements;
- provide for voluntary publicly financed campaigns for all statewide elected officials;
- create a bipartisan committee or task force to study the establishment of a state elections commission;
- provide for legislative compensation; and
- improve governmental transparency.

The task force recommendations for future consideration include:

- study the Procurement Code's definition of "applicable public official" for clarification;
- review options for appointment, minimum qualifications and simplified impeachment processes for the state treasurer and state auditor offices, and certain elected executive offices; and
- provide for voluntary publicly financed campaigns for district court races.

Dean Scarnecchia reviewed briefly each of the recommendations, but left many of the details for presentations scheduled later in the day. The state ethics commission proposal that did not pass the legislature in the past session was revised by the task force this interim to limit the commission's powers. It would be vested with the power to investigate complaints, but would not be able to take action with regard to members of the legislative and judicial branches of government. It could make a determination of probable cause of an ethics law violation, and then report those findings to the appropriate body for action. The commission could take action to sanction certain executive branch violations, however. She said that the other role of the commission, providing educational and training services, would be its most important role.

With regard to campaign finance contribution limits, the still unanswered question would be the scheduling of its implementation. The task force does not want to benefit or penalize unfairly any candidates by implementing changes in the middle of an election cycle, Dean Scarnecchia said.

Improving governmental transparency could be achieved partially by adding employees

to the Secretary of State's Office dedicated to posting lobbyist and candidate reports in real-time. Finally, Dean Scarnecchia said, the task force recommends holding a special session of the legislature no later than April 1, 2008 to consider these reforms. At the time of the subcommittee meeting, the task force still had not reported its findings officially to the governor. Dean Scarnecchia said that the governor would not necessarily endorse all of the recommendations of the task force.

Governor Carruthers spoke in favor of some sort of legislative compensation. He said that he has been in favor of compensation for many years, but realizes that passing such a change in the state constitution would be quite difficult. As a result of that political challenge, the task force recommended as a fallback position allowing an expense account for legislators up to \$10,000 per year and at the same time disallowing the use of campaign contributions for certain personal expenses, which is currently allowed by law.

Senator Rawson asked about the confidentiality of the state ethics commission in its work. Dean Scarnecchia said that all information relating to a possible investigation would be confidential until a finding of probable cause is made, at which time the information would become public. Senator Rawson said the executive branch should not be the only entity to appoint members of the commission, and he expressed concern that the commission could become a conduit for political witch hunts.

Senator Rawson said that campaign contribution limit proposals would need to take into account the geographic size of districts. He also asked whether political party contributions would be limited. Governor Carruthers responded that the task force did not take into account the size of districts. Every entity would be limited to the current limit, set by the federal government, of \$2,300.

Senator Rawson concluded his comments by saying that fixing holes in the Procurement Code should happen soon because currently there are huge procurement irregularities occurring all over the state.

Senator Garcia asked whether the task force reform proposals would apply to local governments. Dean Scarnecchia said that the task force focused on state-level reforms as a start. Reforming ethics-related laws involving local governments is a good idea, but will involve a much larger scope and review of a huge number of statutes, she said.

Representative Taylor asked whether the task force reform proposals would have prevented the state treasurer scandal from occurring had they been in place three years ago. Governor Carruthers said that if the whistleblower protection proposal had been in statute, the extent of the scandal could have been lessened because State Treasurer's Office employees would have felt more secure in disclosing questionable activity. Dean Scarnecchia concurred and said that corruption probably never will be eliminated, but the state needs better methods of dealing with it.

Representative Taylor, referring to the recently enacted Gift Act, said that it is extremely difficult to assign a dollar value to morality. The arbitrary boundary between a legal gift just under \$250 and an illegal one just over that amount is troubling, he said. Governor Carruthers responded by saying that the public today has much more confidence in the judiciary now that it is monitored by the Judicial Standards Commission, and he believes the same can be true of the executive and legislative branches after the task force reforms are enacted and implemented.

Senator Ingle said that it was common knowledge for years that there was a "pay-to-play" system at the State Treasurer's Office, but nobody did anything about it. He also said that he is opposed to a salaried legislature. Once a salary system is implemented, the legislature will constantly raise its own salary. Governor Carruthers said that the task force decided that an expense account, rather than a salary, would be a more expedient solution to the current problem. Including constituent services as part of the account would also make the change more palatable to the public.

Campaign Finance and Disclosure Laws: Reforms Proposed by the Governor's Task Force

Matt Brix, member of the Governor's Task Force on Ethics Reform, presented to the subcommittee a detailed review of the proposed changes to state law regarding campaign finance and disclosure. He said the task force wanted to find creative ways to mitigate the negative influence of money in the political process. The task force recommended several campaign finance and reporting reforms for the legislature to consider, as follows:

- establish limits on campaign contributions to individual candidates of \$2,300, to PACs of \$5,000 and to political parties of \$10,000. The individual contribution limit would be tied to the federal limit, and all limits would take into account inflation. Limits would apply to statewide, county, municipal and school board elections;
- prohibit cash contributions of more than \$100 from a single source within a 24-hour period;
- expand campaign reporting requirements to include more information about each donor contributing more than \$100 to a candidate;
- require third-party groups to report independent expenditures;
- require reporting of aggregate contributions from individual donors and aggregate expenditures made to individual vendors;
- require the secretary of state to provide electronic access to campaign-related reports within 10 days of their reporting deadline;
- provide for electronic access to a list of reporting individuals who fail to meet reporting deadlines;
- provide explicit subpoena power to the attorney general to investigate campaign contribution limitation and reporting violations;
- continue careful consideration of effective dates of proposed legislation to ensure fairness to ongoing election cycles; and
- expand races covered by voluntary public financing of elections incrementally to include all statewide office elections. This would require increasing the monthly distribution from the Uniform Unclaimed Property Fund.

Senator Ingle asked what the largest contributions to legislative candidates have been recently. Mr. Brix said that there have been a few \$5,000 to \$10,000 contributions to legislative candidates. He said that the proposed limits will have more of an impact in statewide elections, where much larger contributions are common.

Senator Rawson asked why the task force wanted to shift enforcement of campaign finance violations from the secretary of state to the attorney general. Mr. Brix said that the task force merely wanted to give the attorney general explicit authority to subpoena, but enforcement of those laws would still reside with the secretary of state. He also said that this particular recommendation arose from deliberations in the legislature in the previous session. Stuart Bluestone of the Attorney General's Office said that there are differences in subpoena power in civil and criminal cases, and this change in the law is intended to avoid what is known as a "parallel proceeding" conflict. Daniel Ivey-Soto, director, Bureau of Elections of the Secretary of State's Office, said the intent was not to remove the secretary of state from investigatory civil proceedings, but to allow the attorney general to provide assistance in such investigations.

Senator Rawson complained that the Secretary of State's Office has been known in the past to publish unfairly campaign reports of one political party much earlier than the other major party. Mr. Ivey-Soto agreed that this has been a problem in the past, but it was due to technical problems, which are now fixed.

Senator Rawson said that he could very easily get around campaign contribution limits by having his entire family give contributions. Further, he could divide his business into any number of limited liability companies, each one giving the maximum contribution to a candidate. He asked what would be the point of setting limits if they are so easy to circumvent. Mr. Brix responded that campaign finance reform needs to be addressed as a complete package in order to reduce abuses and improve public perception of the process. He said that it will never be possible to close every loophole, but that does not mean the legislature should not bother trying to improve the system.

Ethical Conduct of Government Officials and Employees: Ethics Commission Proposed by the Governor's Task Force

Norm Thayer, member of the governor's task force, described the proposed state ethics commission to the subcommittee. The powers and duties of the proposed commission include:

- initiate investigations of alleged ethics violations of executive officials, executive employees, legislators, legislative employees, justices, judges, judicial employees, government contractors and lobbyists;
- impose sanctions against elected executive branch officials;
- remit results of legislative or judicial official or employee investigations to the appropriate regulatory body;
- recommend employment-related discipline to the appropriate authority for executive branch employees, lobbyists and government contractors;
- provide education and training;
- issue advisory opinions; and

- draft ethics guides for government officials and employees and for businesses.

Mr. Thayer said that the primary function of the ethics commission would be educational. It would be charged with writing a code of conduct for the executive branch and provide training to employees and officials of all three branches of government.

With regard to its investigatory powers, the commission initially would be limited to alleged ethical violations of state-level officials and employees, government contractors and lobbyists, Mr. Thayer said. The commission could investigate violations of the Gift Act, the Governmental Conduct Act, the Procurement Code, the Lobbyist Regulation Act, the Financial Disclosure Act and Chapter 1, Article 19 NMSA 1978 relating to campaign practices. The commission could receive complaints and initiate investigations of its own accord. There would be a three-year time limit from the date of an alleged ethics violation in which the commission could initiate an investigation.

If the commission found probable cause that a violation of one of the ethics laws was violated, it would issue a report, which would be public, to the appropriate entity that had authority to sanction the individual. In the case of elected state officials, the commission could recommend specific sanctions against the official. In no case would the commission have the authority to enforce a sanction.

Finally, Mr. Thayer said, the commission could receive requests for and issue advisory opinions, which would generally be confidential.

Senator Rawson said that the appointment of the commission may be problematic. He suggested that the current proposal be modified to reduce the number of gubernatorial appointees, to allow legislative minority leaders to appoint some members, to let the secretary of state and the attorney general appoint a member each and to ensure a proportionate distribution of members across the state. He also said that an advisory opinion issued by the commission could conceivably conflict with an opinion issued by the Legislative Ethics Committee.

Representative Foley said that although he likes the idea of an ethics commission, there are still some details that need to be ironed out to make it work. He said the definition of a lobbyist would need to be specified, and he is concerned that frivolous complaints would be filed. Mr. Thayer said that complainants would be protected from retaliation, so long as complaints are filed in good faith.

Public Comment

Kay Linde spoke about several issues the subcommittee is considering. She said that ordinary citizens need better access to the legislative process, that the ethics commission should be composed of citizens and that all gifts to public officials and employees should be banned.

Judith Binder spoke in favor of many of the task force's recommendations. She recommended upgrading the secretary of state's web site and computer system to make it

accurate, timely and easily accessed. She supported establishing reasonable contribution limits to candidates, a ban on all gifts, protection of whistleblowers, public financing of all elections in the state and creation and funding of a strong ethics commission.

Katherine Campbell, president of the League of Women Voters of New Mexico, said her organization supports most of the task force's recommendations, especially the proposal to provide public financing of elections. She said legislative candidates should also be covered eventually.

Lobbyist Regulation and Disclosure Laws: Reforms Proposed by the Governor's Task Force

Fred Nathan, member of the governor's task force, reviewed for the subcommittee proposed changes to laws regulating lobbyist activities and disclosure of information. The proposals include:

- fund an additional full-time employee of the Secretary of State's Office to enable real-time results of filings;
- require lobbyist employers to disclose amounts paid for lobbyist services;
- require all lobbyists to wear identification badges;
- provide for open conference committee proceedings; and
- require a one-year waiting period for former legislators to become lobbyists.

There has been widespread dissatisfaction with the implementation of electronic reporting by the Secretary of State's Office over the past few years, Mr. Nathan said. A bill passed by the legislature, but vetoed by the governor, would have suspended the requirement to file campaign finance reports electronically. That bill, although introduced because of frustration of many candidates being unable to use the secretary of state's electronic filing program, would have set the state back with regard to citizen access to reporting information. He said the task force instead supports funding the office with more staff and supports allowing other types of electronic reporting than the browser-based entry system currently being used by the secretary of state. Senator Sanchez said that many rural legislators who have dial-up internet access are unable even to access the required web site.

Speaking about the waiting period for ex-legislators becoming lobbyists, Mr. Nathan said that restriction would match the current one with respect to members of Congress. There is also a similar law in New Mexico statutes that prohibits executive branch officers from lobbying for one year after leaving office.

Representative Taylor cautioned against painting all lobbyists with the same tainted brush. Lobbyists also provide much information and expertise during legislative sessions, even though they may not have any vested interest in a given subject. Mr. Nathan agreed, saying that the task force is not trying to restrict lobbying in any way, but is trying to make the process more transparent.

Representative Taylor said that ethics reform needs to be considered alongside other

systemic reforms to make the legislative process more effective. He recommended that if there is a special session to consider the ethics reforms, then the proposals being developed by the Legislative Structure and Process Study Task Force be considered at the same time.

Senator Rawson said that although he supports the idea of open conference committees, he is not sure they would work anymore. The reason, he said, is that as soon as the media get involved in a negotiation, the executive stops cooperating. Conference committees need to meet and resolve issues quickly, he said.

Representative Martinez said that a joint rule requiring open conference committees would be just as effective as passing a law and may be a bit easier to adopt.

Representative Foley said that the Secretary of State's Office already has too many employees and does not need more, especially since most of the problems were caused by the prior administration's incompetence. He also said that requiring lobbyist employers to disclose amounts paid for lobbying is a bad idea and will not help solve any problems. He said the task force should focus on its big reform ideas and not waste time pushing its several minor reforms. He said he supports open conference committees and has introduced legislation over the years to require them. He concluded by advocating for reform in the arena of regulatory justice. He said that, at a minimum, state agencies need to hold hearings in the geographic area in which a regulation will have the most impact.

Senator Garcia said she supports providing additional staff for the Secretary of State's Office, and she probably will support opening conference committees. However, she thinks that requiring lobbyist employers to disclose compensation paid and requiring lobbyists to wear identification badges would not really accomplish anything.

Senator Ingle said he may support opening conference committees this upcoming session.

Senator Sanchez asked how much the proposed legislative expense account would cost. Governor Carruthers said that, depending on whether the proposal includes regional district offices for legislators, the yearly cost could be between \$2.5 million and \$4.1 million. Senator Sanchez said that the total legislative branch expenses per year are between \$7 million and \$10 million. He said that task force members should get the message to the public that the legislature gets a lot done for very little spent and providing expense accounts would not be a very large part of the overall state budget.

Representative Martinez said he supports the task force proposals.

The minutes of the September 14, 2007 meeting of the Ethics Subcommittee were adopted, with corrections.

There being no further business, the subcommittee adjourned at 2:30 p.m.